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TITLE 42

NAMES

- Chapter 1. Change of Name, 42-1-1 to 42-1-3.
2. Conducting Business under Assumed Name, 42-2-5 to 42-2-10
[42-2-1 to 42-2-4 Repealed].
3. Registration of Farm Names, 42-3-1 to 42-3-5.

CHAPTER 1

CHANGE OF NAME

- Section 42-1-1. By petition to district court—Contents.
42-1-2. Notice of hearing—Order of change.
42-1-3. Effect of proceedings.

42-1-1. By petition to district court—Contents.—Any natural person, desiring to change his name, may file a petition therefor in the district court of the county where he resides, setting forth:

- (1) The cause for which the change of name is sought.
- (2) The name proposed.
- (3) That he has been a bona fide resident of the county for the year immediately prior to the filing of the petition.

History: R. S. 1898 & C. L. 1907, § 1545; C. L. 1917, § 4000; R. S. 1933 & C. 1943, 58-1-1.

Cross-Reference.

Adopted child, name and status, 78-30-10.

Collateral References.

Names—20.
65 C.J.S. Names § 11.
Generally, 38 Am. Jur. 594 et seq.,
Names § 1 et seq.

Adoption proceedings, change of child's name in, 53 A. L. R. 2d 927.

42-1-2. Notice of hearing—Order of change.—The court shall order what, if any, notice shall be given of the hearing, and after the giving of such notice, if any, may order the change of name as requested, upon proof in open court of the allegations of the petition and that there exists proper cause for granting the same.

History: R. S. 1898 & C. L. 1907, § 1546; C. L. 1917, § 4001; R. S. 1933 & C. 1943, 58-1-2.

Collateral References.

Duty and discretion of court in passing upon petition to change name of individual, 110 A. L. R. 219.

42-1-3. Effect of proceedings.—Such proceedings shall in no manner affect any legal action or proceeding then pending, or any right, title or interest whatsoever.

History: R. S. 1898 & C. L. 1907, § 1547; C. L. 1917, § 4002; R. S. 1933 & C. 1943, 58-1-3.

CHAPTER 2

CONDUCTING BUSINESS UNDER ASSUMED NAME

Section 42-2-1 to 42-2-4. Repealed.

- 42-2-5. Certificate of assumed and of true name—Contents—Execution—Filing.
- 42-2-6. Change in persons transacting business under assumed name—New certificate.
- 42-2-7. Index—Fees—Evidence.
- 42-2-8. Expiration of filing—Notice by secretary of state—Removal from active index.
- 42-2-9. Corporate names not affected.
- 42-2-10. Penalties.

42-2-1 to 42-2-4. Repealed.**Repeal.**

Sections 42-2-1 to 42-2-4 (C. L. 1917, §§ 4005, 4007 to 4009; R. S. 1933 & C. 1943, 58-2-1 to 58-2-4), relating to the filing of affidavits of assumed and true

business names and providing a penalty for noncompliance, were repealed by Laws 1963, ch. 73, § 7. For present provisions, see 42-2-5 et seq.

42-2-5. Certificate of assumed and of true name—Contents—Execution—Filing.—Every person or persons who shall carry on, conduct or transact business in this state under an assumed name, whether such business be carried on, conducted or transacted as an individual, association, partnership, corporation or otherwise, shall file in the office of the secretary of state a certificate setting forth the name under which such business is, or is to be carried on, conducted or transacted, and the full true name, or names, of the person or persons owning, and the person or persons carrying on, conducting or transacting such business, the location of the principal place of business and the post-office address, or addresses of such person or persons. Such certificate shall be executed by the person or persons owning, and the person or persons carrying on, conducting or transacting such business, and shall be filed not later than thirty days after the time of commencing to carry on, conduct or transact said business.

History: L. 1963, ch. 73, § 1.

Title of Act.

An act providing for the filing of an affidavit by persons transacting business under an assumed name and repealing chapter 2 of Title 42, Utah Code Annotated 1953.

Cross-References.

- Change of name of pharmacy, 58-17-7.
- Corporate name, 16-10-7 to 16-10-10.
- Motor club's name, 41-16-6.
- Nonprofit corporation's name, 16-6-24, 16-6-25.

1. Application of statute.

Recovery for services rendered should not be precluded because there was not substantial compliance with assumed name statute if plaintiffs are otherwise entitled to judgment. *Oakason v. Lisbon Valley Uranium Co.*, 154 F. Supp. 692.

2. Affidavit.

The purpose of the filing of such affidavits or certificates is to give notice to the public as to the name or names of the persons conducting or owning the business and to protect those who transact business with persons under the assumed name. *Putnam v. Industrial Comm.*, 80 U. 187, 14 P. 2d 973.

This affidavit is generally made on a printed blank furnished by the county clerk, and must comply with this statute. A certified copy of the affidavit and of its filing is admissible in evidence and is prima facie evidence of the facts therein recited. *Putnam v. Industrial Comm.*, 80 U. 187, 14 P. 2d 973.

3. Appellate practice.

Where case originates in city court, but is appealed to district court, and defendant sets up failure to comply with this section in city court only, but does not

repeat same in district court, Supreme Court, on appeal from later court, will regard objection as waived. Christensen v. Johnson, 90 U. 273, 61 P. 2d 597.

Collateral References.

Names ~~10~~.

65 C.J.S. Names § 9.

Fictitious or assumed name, 38 Am. Jur. 600 et seq., Names § 11 et seq.

Construction and effect of statutes as to doing business under an assumed or fic-

titious name or designation not showing the names of the persons interested, 45 A. L. R. 198, 59 A. L. R. 455, 42 A. L. R. 2d 516.

Personal liability of persons doing business in the name of a dormant corporation, 18 A. L. R. 282.

Validity and construction of constitutional or statutory provisions which prohibit use by corporation or partnership, as a part of its name, of certain described words giving impression that it is subject to governmental control, 63 A. L. R. 1049.

DECISIONS UNDER FORMER LAW

Purpose of statute.

Repealed assumed name statute (42-2-1, U. C. A. 1953) was primarily for the convenience of the public, and those deal-

ing with partnerships and other unincorporated associations. Oakason v. Lisbon Valley Uranium Co., 154 F. Supp. 692.

42-2-6. Change in persons transacting business under assumed name—New certificate.—A new certificate shall be filed, as provided in section 42-2-5 not later than thirty days after any change in the person or persons owning or carrying on, conducting or transacting such business.

History: L. 1963, ch. 73, § 2.

Collateral References.

Personal liability of officers or stock-

holders for debts of corporation which has made an authorized change in its name, 8 A. L. R. 583.

42-2-7. Index—Fees—Evidence.—The secretary of state shall keep an active alphabetical index of all persons filing the certificates provided for herein, and for indexing and filing each such certificate shall collect a fee of \$1.00. A copy of any such certificate certified by the secretary of state shall be presumptive evidence of the facts therein contained.

History: L. 1963, ch. 73, § 3.

42-2-8. Expiration of filing—Notice by secretary of state—Removal from active index.—A filing made pursuant to the provisions of this act shall be effective for a period of eight years from the date of filing. At the expiration of that period of time if no new filing is made by or on behalf of that person or persons who made said filing, the secretary of state shall send a notice by regular mail, postage prepaid, addressed to such person or persons at their post-office address shown in the filing indicating that it has expired. If no new filing is made within thirty days after the date of mailing said notice, the secretary of state shall remove said name from said active alphabetical index, and place the same on a permanent inactive alphabetical index.

History: L. 1963, ch. 73, § 4.

42-2-9. Corporate names not affected.—This chapter shall in no way affect or apply to any corporation duly organized under the laws of this

state or under the laws of any other state, which shall carry on, conduct or transact its business under its true corporate name.

History: L. 1963, ch. 73, § 5.

Nonprofit corporation's name, 16-6-24, 16-6-25.

Cross-References.

Corporate name, 16-10-7 to 16-10-10.

42-2-10. Penalties.—Any person or persons who shall carry on, conduct or transact any such business under an assumed name without having complied with the provisions of this act shall not sue, prosecute or maintain any action, suit, counterclaim, cross complaint or proceeding in any of the courts of this state until the provisions of this chapter have been complied with, and any such person or persons so failing to comply shall be guilty of a misdemeanor.

History: L. 1963, ch. 73, § 6.

Platt v. Locke, 11 U. (2d) 273, 358 P. 2d 95.

Repealing Clause.

Section 7 of Laws 1963, ch. 73, provided: "Chapter 2 of Title 42 [42-2-1 to 42-2-4], Utah Code Annotated 1953, is hereby repealed."

1. Effect of noncompliance.

Failure to comply with the requirements of this chapter may be raised by demurrer to complaint. *Christensen v. Johnson*, 90 U. 273, 61 P. 2d 597.

The legislature did not intend, in addition to subjecting an offender to an express penalty, also to impose the additional penalty of refusing him any relief on a contract or transaction entered into without compliance with this statute.

2. Operation and effect.

The fact that a contractor was doing business under an assumed name which included the word "Inc." and without incorporating his business did not bar his recovery under a contract since the law recognizes that persons may transact business under an assumed name as long as fraud, infringement of trade-mark or unfair competition are not involved and since the person with whom the contractor made the contract knew that the contractor was doing business under the assumed name. *Platt v. Locke*, 11 U. (2d) 273, 358 P. 2d 95.

CHAPTER 3

REGISTRATION OF FARM NAMES

Section 42-3-1. Commissioner of agriculture to register names.

42-3-2. Recording fee.

42-3-3. Transfer of name.

42-3-4. Cancellation by owner.

42-3-5. Use of name by another—Penalty.

42-3-1. Commissioner of agriculture to register names.—Any owner of a farm in this state may have the name of his farm, together with a brief description of his lands to which such name applies, recorded in a register kept for the purpose in the office of the commissioner of agriculture, and the commissioner of agriculture shall furnish to such landowner a proper certificate setting forth such name and a brief description of such lands. When any name shall have been so recorded it shall not be recorded as the name of any other farm.

History: L. 1917, ch. 18, § 1; C. L. 1917, § 4010; R. S. 1933 & C. 1943, 58-3-1.

Collateral References.

Agriculture—1.

3 C.J.S. Agriculture § 2.

42-3-2. Recording fee.—Any person having the name of his farm so recorded shall first pay to the commissioner of agriculture a fee of \$2, which fee shall be transmitted to the state treasurer as are other fees.

History: L. 1917, ch. 18, § 2; C. L. 1917, § 4011; R. S. 1933 & C. 1943, 58-3-2.

42-3-3. Transfer of name.—When any owner of a farm, the name of which has been recorded as provided in this chapter, transfers by deed or otherwise the whole of such farm, the transfer may include the registered name thereof; but, if the owner shall transfer only a portion of such farm, the registered name thereof shall not be deemed transferred, unless so stated in the conveyance.

History: L. 1917, ch. 18, § 3; C. L. 1917, § 4012; R. S. 1933 & C. 1943, 58-3-3.

42-3-4. Cancellation by owner.—When any owner of a registered farm desires to cancel its registered name he shall write on the back of the certificate the following: "This name is canceled, and I hereby release all rights thereunder," and shall sign such statement in the presence of a witness and file the same in the office of the commissioner of agriculture. For such filing the commissioner of agriculture shall charge a fee of 25 cents, which shall be paid to the state treasurer as other fees. The commissioner of agriculture shall, when such certificate so endorsed has been filed in his office, write on the margin of the register of such name the word "canceled."

History: L. 1917, ch. 18, § 4; C. L. 1917, § 4013; R. S. 1933 & C. 1943, 58-3-4.

42-3-5. Use of name by another—Penalty.—It is a misdemeanor for any person other than the person in whose name a farm is registered to use such registered name for any other farm.

History: L. 1917, ch. 18, § 5; C. L. 1917, § 4014; R. S. 1933 & C. 1943, 58-3-5.

TITLE 43

NEGOTIABLE CERTIFICATES

Chapter 1. General Provisions, 43-1-1 to 43-1-3.

CHAPTER 1

GENERAL PROVISIONS

- Section 43-1-1. "Security receipt," "equipment trust certificate" defined.
43-1-2. Transfer—By delivery—By endorsement—Rights of transferee.
43-1-3. Restrictive construction of title—Effective date.

43-1-1. "Security receipt," "equipment trust certificate" defined.—For the purpose of this title:

The term "security receipt" means any writing in and by which the signer sets forth that the person named therein or the bearer, is entitled to receive a specified principal amount, par value, or number, of bonds, notes, debentures, shares of stock, voting-trust certificates for shares of stock, scrip or other security of any kind or character, identified or described therein, absolutely or when, as or if, received by the signer, or upon any other contingency stated or referred to therein.

The term "equipment trust certificate" means any writing in which the signer sets forth that the person named therein or the bearer is entitled to an interest in, or a share of, a specified principal amount, or par value in money, in a trust under an identified trust indenture, pursuant to the terms of which title to rolling stock or equipment for use by or on the line or route of a common carrier, or to vessels or other marine equipment, is held in trust for the benefit of all the holders of such interests or shares.

The character of any such security receipt, or equipment trust certificate, is not affected by including therein other provisions which do not limit the right of transfer or the negotiable quality thereof as in this title provided.

History: L. 1929, ch. 53, § 1; R. S. 1933 Collateral References.
& C. 1943, 60-0-1. Railroads 148.

Cross-Reference.

74 C.J.S. Railroads § 247.

Words and phrases defined by statute,
construction of, 68-3-11.

43-1-2. Transfer—By delivery—By endorsement—Rights of transferee.
—Title to any security receipt, or equipment trust certificate, which by its terms entitles the bearer to the benefits thereof, may be transferred by delivery by any person in possession of the same, howsoever such possession may have been acquired.

Title to any security receipt, or equipment trust certificate, which by its terms entitles the person named therein to the benefits thereof, and which provides in substance that title thereto is transferable with the same effect as in the case of a negotiable instrument, may be transferred by delivery by any person in possession of the same, howsoever such possession may have been acquired, if endorsed in blank or, if it is endorsed to a specified person, by delivery by such other person.

A person to whom title is so transferred, who takes any such instrument for present or antecedent value, without notice of prior defenses, equities or claims of ownership enforceable against the transferor, shall have absolute title thereto free of any defenses enforceable against, or claims of ownership of, the signer or any prior holder. The holder of any such security receipt, or equipment trust certificate, unless the same has been endorsed to a specified person other than the holder and has not been endorsed in blank by such specified person, shall be deemed *prima facie* to have title thereto as aforesaid; but when it is shown that the title of any person who has negotiated such instrument is defective, the burden is on the holder to prove that he, or some person under whom he claims, acquired title as a holder for value and without notice as aforesaid.

The provisions of this section shall not be applicable to the transfer of any security receipt, or equipment trust certificate, when it is shown that such transfer was made after the date fixed therein for performance by the signer of his obligations thereunder, or, if no date is so fixed, after the expiration of a reasonable time after the happening of the contingency upon which the signer became obligated to perform.

History: L. 1929, ch. 53, § 2; R. S. 1933
& C. 1943, 60-0-2.

43-1-3. Restrictive construction of title—Effective date.—This title shall not be construed to limit or impair the negotiability or quasi negotiability, by agreement or otherwise, of any instrument whether or not defined herein. The provisions of this title shall apply only to instruments issued after the thirteenth day of May, 1929.

History: L. 1929, ch. 53, § 3; R. S. 1933
& C. 1943, 60-0-3.

Collateral References.

Railroads—148.

74 C.J.S. Railroads § 247.

TITLE 44

NEGOTIABLE INSTRUMENTS

(Title 44 is repealed by Laws 1965, ch. 154, § 10-102)

- Chapter 1. Negotiable Instruments in General [44-1-1 to 44-1-127 Repealed].
2. Bills of Exchange [44-2-1 to 44-2-58 Repealed].
 3. Promissory Notes and Checks [44-3-1 to 44-3-6 Repealed].
 4. General Provisions [44-4-1 to 44-4-6 Repealed].

CHAPTER 1

NEGOTIABLE INSTRUMENTS IN GENERAL

- ARTICLE 1. FORM AND INTERPRETATION [44-1-1 to 44-1-24 Repealed].
2. CONSIDERATION [44-1-25 to 44-1-30 Repealed].
 3. NEGOTIATION [44-1-31 to 44-1-51 Repealed].
 4. RIGHTS OF THE HOLDER [44-1-52 to 44-1-60 Repealed].
 5. LIABILITIES OF PARTIES [44-1-61 to 44-1-70 Repealed].
 6. PRESENTATION FOR PAYMENT [44-1-71 to 44-1-90 Repealed].
 7. NOTICE OF DISHONOR [44-1-91 to 44-1-120 Repealed].
 8. DISCHARGE OF NEGOTIABLE INSTRUMENTS [44-1-121 to 44-1-127 Repealed].

ARTICLE 1

FORM AND INTERPRETATION

(Repealed by Laws 1965, ch. 154, § 10-102)

44-1-1 to 44-1-24. Repealed.

Repeal.

Sections 44-1-1 to 44-1-24 (L. 1899, ch. 83, §§ 1 to 23; C. L. 1907, §§ 1553 to 1575; C. L. 1917, §§ 4030 to 4052; L. 1925, ch. 2, § 1; R. S. 1933 & C. 1943, 61-1-1 to 61-1-24;

L. 1953, ch. 72, § 1), relating to the form and interpretation of negotiable instruments, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-101 et seq.

ARTICLE 2

CONSIDERATION

(Repealed by Laws 1965, ch. 154, § 10-102)

44-1-25 to 44-1-30. Repealed.

Repeal.

Sections 44-1-25 to 44-1-30 (L. 1899, ch. 83, §§ 24 to 29; C. L. 1907, §§ 1576 to 1581; C. L. 1917, §§ 4053 to 4058; R. S.

1933 & C. 1943, 61-1-25 to 61-1-30), relating to consideration, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-303, 70A-3-408, 70A-3-415.

ARTICLE 3

NEGOTIATION

(Repealed by Laws 1965, ch. 154, § 10-102)

44-1-31 to 44-1-51. Repealed.

Repeal.

Sections 44-1-31 to 44-1-51 (L. 1899, ch.

83, §§ 30 to 50; C. L. 1907, §§ 1582 to 1602; C. L. 1917, §§ 4059 to 4079; R. S. 1933 &

C. 1943, 61-1-31 to 61-1-51), relating to ch. 154, § 10-102. For present provisions, negotiation, were repealed by Laws 1965, see 70A-3-201 et seq.

ARTICLE 4

RIGHTS OF THE HOLDER

(Repealed by Laws 1965, ch. 154, § 10-102)

44-1-52 to 44-1-60. Repealed.**Repeal.**

Sections 44-1-52 to 44-1-60 (L. 1899, ch. 83, §§ 51 to 59; C. L. 1907, §§ 1603 to 1611; C. L. 1917, §§ 4085 to 4093; R. S. 1933 &

C. 1943, 61-1-52 to 61-1-60), relating to rights of the holder, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-301 et seq.

ARTICLE 5

LIABILITIES OF PARTIES

(Repealed by Laws 1965, ch. 154, § 10-102)

44-1-61 to 44-1-70. Repealed.**Repeal.**

Sections 44-1-61 to 44-1-70 (L. 1899, ch. 83, §§ 60 to 69; C. L. 1907, §§ 1612 to 1621; C. L. 1917, §§ 4094 to 4103; R. S. 1933 & C. 1943, 61-1-61 to 61-1-70), relating to

liabilities of parties to negotiable instruments, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-401 et seq.

ARTICLE 6

PRESENTMENT FOR PAYMENT

(Repealed by Laws 1965, ch. 154, § 10-102)

44-1-71 to 44-1-90. Repealed.**Repeal.**

Sections 44-1-71 to 44-1-90 (L. 1899, ch. 83, §§ 70 to 88; C. L. 1907, §§ 1622 to 1640; C. L. 1917, §§ 4105 to 4123; L. 1925, ch. 3, § 1; R. S. 1933 & C. 1943, 61-1-71 to

61-1-90), relating to presentment of instrument for payment, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-501 et seq.

ARTICLE 7

NOTICE OF DISHONOR

(Repealed by Laws 1965, ch. 154, § 10-102)

44-1-91 to 44-1-120. Repealed.**Repeal.**

Sections 44-1-91 to 44-1-120 (L. 1899, ch. 83, §§ 89 to 118; C. L. 1907, §§ 1641 to 1665, 1665X to 1665X4; C. L. 1917, §§ 4125 to 4154; R. S. 1933 & C. 1943, 61-1-91 to

61-1-120), relating to notice of dishonor of negotiable instruments, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-507 et seq.

ARTICLE 8

DISCHARGE OF NEGOTIABLE INSTRUMENTS

(Repealed by Laws 1965, ch. 154, § 10-102)

44-1-121 to 44-1-127. Repealed.**Repeal.**

Sections 44-1-121 to 44-1-127 (L. 1899,

ch. 83, §§ 119 to 125; C. L. 1907, §§ 1665X5 to 1665X11; C. L. 1917, §§ 4155 to 4161;

R. S. 1933 & C. 1943, 61-1-121 to 61-1-127), 154, § 10-102. For present provisions, see relating to discharge of negotiable instruments, were repealed by Laws 1965, ch. 70A-3-601 et seq.

CHAPTER 2

BILLS OF EXCHANGE

- ARTICLE 1. FORM AND INTERPRETATION [44-2-1 to 44-2-6 Repealed].
 2. ACCEPTANCE [44-2-7 to 44-2-17 Repealed].
 3. PRESENTATION FOR ACCEPTANCE [44-2-18 to 44-2-26 Repealed].
 4. PROTEST [44-2-27 to 44-2-35 Repealed].
 5. ACCEPTANCE FOR HONOR [44-2-36 to 44-2-45 Repealed].
 6. PAYMENT FOR HONOR [44-2-46 to 44-2-52 Repealed].
 7. BILLS IN A SET [44-2-53 to 44-2-58 Repealed].

ARTICLE 1

FORM AND INTERPRETATION

(Repealed by Laws 1965, ch. 154, § 10-102)

44-2-1 to 44-2-6. Repealed.

Repeal.

Sections 44-2-1 to 44-2-6 (L. 1899, ch. 83, §§ 126 to 131; C. L. 1907, §§ 1665X12 to 1665X17; C. L. 1917, §§ 4165 to 4170; R. S. 1933 & C. 1943, 61-2-1 to 61-2-6; L. 1961, ch. 98, § 1), relating to the definition of "bill of exchange," the form of bills,

inland and foreign bills, when bill treated as promissory note, and referee in case of need, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-102, 70A-3-104, 70A-3-409, 70A-3-501, 70A-3-503, 70A-3-511.

ARTICLE 2

ACCEPTANCE

(Repealed by Laws 1965, ch. 154, § 10-102)

44-2-7 to 44-2-17. Repealed.

Repeal.

Sections 44-2-7 to 44-2-17 (L. 1899, ch. 83, §§ 132 to 142; C. L. 1907, §§ 1665X18 to 1665X28; C. L. 1917, §§ 4171 to 4181; R. S. 1933 & C. 1943, 61-2-7 to 61-2-17),

relating to acceptance of bills of exchange, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-410, 70A-3-412.

ARTICLE 3

PRESENTMENT FOR ACCEPTANCE

(Repealed by Laws 1965, ch. 154, § 10-102)

44-2-18 to 44-2-26. Repealed.

Repeal.

Sections 44-2-18 to 44-2-26 (L. 1899, ch. 83, §§ 143 to 151; C. L. 1907, §§ 1665X29 to 1665X37; C. L. 1917, §§ 4182 to 4190; R. S. 1933 & C. 1943, 61-2-18 to 61-2-26),

relating to presentment of bills for acceptance, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-501 et seq.

ARTICLE 4

PROTEST

(Repealed by Laws 1965, ch. 154, § 10-102)

44-2-27 to 44-2-35. Repealed.

Repeal.

Sections 44-2-27 to 44-2-35 (L. 1899, ch. 83, §§ 152 to 160; C. L. 1907, §§ 1665X38 to 1665X46; C. L. 1917, §§ 4191 to 4199;

44-2-36

NEGOTIABLE INSTRUMENTS

R. S. 1933 & C. 1943, 61-2-27 to 61-2-35), relating to protest, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-501, 70A-3-509, 70A-3-511.

ARTICLE 5

ACCEPTANCE FOR HONOR

(Repealed by Laws 1965, ch. 154, § 10-102)

44-2-36 to 44-2-45. Repealed.

Repeal.

Sections 44-2-36 to 44-2-45 (L. 1899, ch. 83, §§ 161 to 170; C. L. 1907, §§ 1665X47 to 1665X56; C. L. 1917, §§ 4200 to 4209;

R. S. 1933 & C. 1943, 61-2-36 to 61-2-45), relating to acceptance of bill for honor, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-410.

ARTICLE 6

PAYMENT FOR HONOR

(Repealed by Laws 1965, ch. 154, § 10-102)

44-2-46 to 44-2-52. Repealed.

Repeal.

Sections 44-2-46 to 44-2-52 (L. 1899, ch. 83, §§ 171 to 177; C. L. 1907, §§ 1665X57 to 1665X63; C. L. 1917, §§ 4210 to 4216; R. S. 1933 & C. 1943, 61-2-46 to 61-2-52),

relating to payment for honor of bills of exchange, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-603.

ARTICLE 7

BILLS IN A SET

(Repealed by Laws 1965, ch. 154, § 10-102)

44-2-53 to 44-2-58. Repealed.

Repeal.

Sections 44-2-53 to 44-2-58 (L. 1899, ch. 83, §§ 178 to 183; C. L. 1907, §§ 1665X64 to 1665X69; C. L. 1917, §§ 4217 to 4222;

R. S. 1933 & C. 1943, 61-2-53 to 61-2-58), relating to bills in a set, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-801.

CHAPTER 3

PROMISSORY NOTES AND CHECKS

(Repealed by Laws 1965, ch. 154, § 10-102)

44-3-1 to 44-3-6. Repealed.

Repeal.

Sections 44-3-1 to 44-3-6 (L. 1899, ch. 83, §§ 184 to 189; C. L. 1907, §§ 1665X70 to 1665X75; C. L. 1917, §§ 4223 to 4228; R. S. 1933 & C. 1943, 61-3-1 to 61-3-6),

relating to promissory notes and checks, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-3-104, 70A-3-501 et seq., 70A-3-409, 70A-3-411.

CHAPTER 4

GENERAL PROVISIONS

(Repealed by Laws 1965, ch. 154, § 10-102)

44-4-1 to 44-4-6. Repealed.

Repeal.

Sections 44-4-1 to 44-4-6 (L. 1899, ch. 83, §§ 191 to 196; C. L. 1907, §§ 1665X77 to 1665X82; C. L. 1917, §§ 4230 to 4235; R. S. 1933 & C. 1943, 61-4-1 to 61-4-6),

containing general provisions relating to negotiable instruments, were repealed by Laws 1965, ch. 154, § 10-102. For present provisions, see 70A-1-103, 70A-1-201, 70A-3-102, 70A-3-410, 70A-3-503, 70A-8-313.

TITLE 45

NEWSPAPERS AND RADIO BROADCASTING

- Chapter 1. Official Notices, 45-1-1, 45-1-2.
2. Libel, 45-2-1 to 45-2-8, 45-2-10 [45-2-9 Repealed].

CHAPTER 1

OFFICIAL NOTICES

- Section 45-1-1. Newspapers "of general circulation"—Requirements.
45-1-2. Maximum charges.

45-1-1. Newspapers "of general circulation"—Requirements.—No newspaper shall be deemed a newspaper having general circulation for the purpose of publishing any notice, advertisement or publication of any kind required by law, unless it has a bona fide subscription list of not less than two hundred subscribers in this state, and shall have been published for not less than eighteen months, and shall have been admitted in the United States mails as second-class matter for twelve months; provided, that nothing in this chapter shall invalidate the publication in a newspaper which has simply changed its name or ownership, or has simply moved its place of publication from one part of the state to another, or suspended publication on account of fire, flood or unavoidable accident not to exceed ten weeks; provided further, that nothing in this chapter shall apply to any county wherein no newspaper has been published the requisite length of time.

History: L. 1929, ch. 86, § 1; R. S. 1933 & C. 1943, 62-1-1.

Compiler's Notes.

Section 1 of Laws 1919, ch. 44 was repealed by Laws 1929, ch. 86, § 1 and a new section substituted therefor.

The Code Commission in compiling the Revised Statutes of 1933 rewrote this section which, as enacted, read: "No legal notice, advertisement or publication of any kind required or provided by any of the laws of the State of Utah, to be published in a newspaper, or any public notice for any county, city, board of education, town, or other municipality or public corporation within this State, shall have any force or effect unless the same be printed or published in a newspaper having general circulation in said county, city, board of education district, town or other municipality, and such newspaper must have a bona fide subscription list of not less than two hundred subscribers in this State and

shall have been published for not less than eighteen months, twelve months of which time the same must have been admitted in the United States mails as second class matter; provided, however, that nothing in this Act shall invalidate the publication in a newspaper which has simply changed its name, ownership, or moved its place of publication from one part of the State to another, or suspended publication on account of fire, flood, or other unavoidable accident for not to exceed ten weeks next immediately preceding the first publication of the legal notice, advertisement, or publication: and provided further, that nothing in this Act shall apply to counties wherein no newspaper has been published the requisite length of time: provided, that none of the provisions of this Act shall apply to any newspaper now in existence and operating in accordance with the laws of the State of Utah."

Collateral References.Newspapers \S 1(2).66 C.J.S. Newspapers \S 2.Publication of official notices, 39 Am. Jur. 5 et seq., Newspapers and Press Associations \S 6 et seq.

Necessity that newspaper be published in English language, 90 A. L. R. 500.

Newspapers as within statutes as to pub-

lication of notice for resale of repossessed property by conditional vendors, 49 A. L. R. 2d 41.

Validity of legislation relating to publication of legal notices, 26 A. L. R. 2d 655.

What constitutes a newspaper of general circulation within a statute in relation to publication of notices, etc., 68 A. L. R. 542.

45-1-2. Maximum charges.—A legal rate of fifteen cents per line on the basis of an eight-point line, not less than eleven ems wide, is hereby established in all cities and towns having a population under 25,000 for the publishing of any notice, advertisement or publication of any kind required by law.

History: L. 1919, ch. 44, \S 2; R. S. 1933 & C. 1943, 62-1-2; L. 1953, ch. 74, \S 1; 1961, ch. 99, \S 1.

Compiler's Notes:

Prior to the 1953 amendments this section read: "A maximum charge of ten cents per line on the basis of an eight-point thirteen-em line is hereby established in all cities and towns having a population under 25,000 for such publications."

The 1961 amendment deleted "twelve-em" before, and inserted "not less than eleven ems wide," after "line."

Cross-References.

Designation of newspaper for publication of notice, Rules of Civil Procedure, Rule 4(k).

Proof of publication of documents, notices or orders, 78-25-14.

Collateral References.Newspapers \S 5(2).66 C.J.S. Newspapers \S 20.Service by publication of notice, 42 Am. Jur. 47, Process \S 58.**CHAPTER 2****LIBEL**

- | | |
|---------|---|
| Section | 45-2-1. Retraction by newspapers—Limit of recovery. |
| | 45-2-2. "Libel" defined. |
| | 45-2-3. "Privileged publication" defined. |
| | 45-2-4. Malice not inferred from publication. |
| | 45-2-5. Radio or television broadcasting station or network of stations. |
| | 45-2-6. Right of station to require submission of matter intended to be broadcast. |
| | 45-2-7. Limitations and restrictions upon immunity from liability—Failure to exercise due care. |
| | 45-2-8. Liability in case of joint operation. |
| | 45-2-9. Repealed. |
| | 45-2-10. Privileged broadcasts. |

45-2-1. Retraction by newspapers—Limit of recovery.—If it shall appear on the trial of any action brought for the publication of any alleged libel in any newspaper published in this state that the alleged libel was published in good faith, that the publication thereof was due to mistake or misapprehension of the facts, and that a full and fair retraction of any statement therein alleged to be erroneous was published in the same type and in the same position on the same page as was the article complained of as libelous, in the next regular issue of such newspaper, or in case of a daily paper within three days, after service upon the publisher of such newspaper, at the principal office of its publication by the party aggrieved,

of a written notice specifying the statement alleged to be erroneous, or, in case such notice is not served in the issue or within the time above specified after the filing of the complaint and service of the summons in said action, then the plaintiff shall recover only actual damages; provided, that if such libel was published in a Sunday edition, the publication of the retraction must have been in a Sunday edition within two weeks after the times above specified; provided further, that this section shall not apply in the case of any libel against any candidate for a public office at any election or primary, or any avowed candidate for nomination to any office before any political convention, unless the retraction of the charge was made editorially in a conspicuous manner at least five days before the holding of such election, primary or political convention in case such libelous article was published in a daily paper, or if published in a weekly paper, at least three days before the holding thereof, which editorial retraction shall be in lieu of any other retraction herein provided for.

History: R. S. 1898 & C. L. 1907, § 1348; C. L. 1917, § 3692; R. S. 1933, 62-2-1; L. 1933, ch. 46, § 1; C. 1943, 62-2-1.

Compiler's Notes.

The 1933 amendment inserted "in the same type and in the same position on the same page as was the article complained of as libelous" after "erroneous was published" and rewrote the two provisos which formerly read, "Provided, that if such libel was published in a Sunday edition, one of the publications of the retraction must have been in a Sunday edition; provided further, that this chapter shall not apply in the case of any libel against any candidate for a public office at any election or primary, or any avowed candidate for nomination to any office before any political convention, unless the retraction of the charge was made editorially in a conspicuous manner, in the case of a daily paper at least five days before the holding of such election, primary or political convention, and in case of a weekly paper at least ten days before such election, primary or political convention."

Cross-References.

Criminal libel and slander, 76-40-1 et seq.

Pleading and burden of proof, civil actions, Rules of Civil Procedure, Rule 9(j).

Collateral References.

Libel and Slander—66.

53 C.J.S. Libel and Slander § 257.

Libelous publications, 39 Am. Jur. 18 et seq., Newspapers and Press Associations § 29 et seq.

Admissibility on question of damages in

action for libel or slander of testimony as to the impression or effect of the matter upon the minds of individuals, 12 A. L. R. 2d 1005.

Failure to deny or to reply to charge or to take other steps to mitigate damages as affecting recovery for libel or slander, 56 A. L. R. 255.

Financial worth of one or more of several joint defendants as proper matter for consideration in fixing punitive damages, 9 A. L. R. 3d 692.

Headline construed with article, 59 A. L. R. 1061.

Headline, libel by, 59 A. L. R. 1061.

Ignorance of writer's libelous intention as affecting publisher's liability, 10 A. L. R. 672.

Libel and slander—false news reports as to births, betrothals, marriages, divorces, or similar marital matters, 9 A. L. R. 3d 559.

Libel and slander—value of civil libel action against newspaper or periodical, 15 A. L. R. 3d 1249.

Mental or physical suffering as element of damages for libel or slander, 90 A. L. R. 1175.

News agency or regular correspondent, libelous or privileged character of publication by newspaper based on matter received from, 86 A. L. R. 475.

Provocation as mitigating damages in action for libel or slander, 132 A. L. R. 932.

Retraction as affecting right of action or amount of damages for libel or slander, 13 A. L. R. 794.

Validity, construction, and application of statute limiting damages recoverable for defamation, 13 A. L. R. 2d 277.

45-2-2. "Libel" defined.—A libel is a malicious defamation, expressed either by printing or by signs or pictures or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

History: L. 1933, ch. 46, § 2; C. 1943, 62-2-2.

Cross-References.

Criminal libel, definition, 76-40-1.

Words and phrases defined by statute, construction of, 68-3-11.

1. Charge of disloyalty to United States.

While book "Under Cover" published in 1943, exposing pro-Nazi and pro-Fascist elements in United States and mentioning plaintiff by name, did not specifically and categorically state that plaintiff was pro-Nazi or pro-Fascist or that he was disloyal to United States, statements therein referring directly to him, which were clearly and certainly susceptible of that construction when read in connection with entire book, when taken into consideration with war conditions existing at time of book's publication, were reasonably calculated to subject plaintiff to public hatred, odium and contempt and therefore constituted libel per se. *Derounian v. Stokes*, 168 F. 2d 305.

2. Ridicule of personal appearance.

Statements respecting plaintiff's physical appearance, in book published in 1943 exposing pro-Nazi and pro-Fascist elements in United States, that he was small and rotund in stature, baldheaded and had round face, that his eyes were small in size and beady in appearance, that he wore rimmed glasses, and that he was of single-track, uncompromising zealot type, whether untrue or otherwise, were not reasonably calculated to subject plaintiff to public ridicule within meaning of statute, so that submission to jury of ridicule of physical appearance as element of libelous matter for which damages could be awarded constituted reversible error. *Derounian v. Stokes*, 168 F. 2d 305.

3. Truth as defense.

Truth of matters charged as defamatory exempts publisher thereof from civil liability for libel. *Derounian v. Stokes*, 168 F. 2d 305.

4. Libel per se.

It is now the generally accepted view that to write of a person or an organization as being "Communist" or a "Communist Sympathizer" is to subject such person or organization to public hatred,

odium, and contempt, to his immediate harm, and is therefore libelous per se. *Utah State Farm Bureau Federation v. National Farmers' Union Service Corp.*, 198 F. 2d 20, 33 A. L. R. 2d 1186.

Where defendant had published in several newspapers, under the heading of legal notices, a statement to the effect that a named person and his associates were claim jumpers, etc., it was libelous per se. It was designed to injure those to whom reference was made in their business or professional capacities. *Simpson v. Steen*, 127 F. Supp. 132.

5. Action by member of general class.

Where a defamatory publication affects only a general class, no member of that class can maintain an action therefor unless the defamatory material is applicable to every member of the class or is especially applicable to a particular member. It is not sufficient that the plaintiff knows that he was the subject of the article or that the defendants knew this when they were writing but it must appear that third persons must have reasonably understood that the article was written of, and concerning the plaintiff and that the libelous expressions referred to him. *Simpson v. Steen*, 127 F. Supp. 132.

6. Joint actions.

Persons cannot jointly maintain a cause of action for damages to themselves individually since even though both of them are affected by the same libel, their respective damages may be dependent upon different considerations and will be dependent upon different considerations and will vary in degree; but if the publications affect them in a joint capacity, such as partners, a joint action will lie for damages to the joint interest but not including injury to individual reputations. *Simpson v. Steen*, 127 F. Supp. 132.

7. Defenses.

If a published statement is libelous as a matter of law, it is no defense that it was repeated from another source. *Utah State Farm Bureau Federation v. National Farmers' Union Service Corp.*, 198 F. 2d 20, 33 A. L. R. 2d 1186.

8. Mitigation of damages.

Contemporaneous libels are not admissible to mitigate damages for libels per

se. *Utah State Farm Bureau Federation v. National Farmers' Union Service Corp.*, 198 F. 2d 20, 33 A. L. R. 2d 1186.

The Congressional Record of a senator's speech which had been prepared by the defendants' agent for delivery on the senate floor, and which contained the libelous statement, is not competent evidence in mitigation of damages. *Utah State Farm Bureau Federation v. National Farmers' Union Service Corp.*, 198 F. 2d 20, 33 A. L. R. 2d 1186.

Collateral References.

Libel and Slander—1½.
53 C.J.S. Libel and Slander § 1.
Defamation of persons, 33 Am. Jur. 37 et seq., Libel and Slander § 1 et seq.

Abusive words as slander or libel, 37 A. L. R. 883.

Liability of master or principal for servant's or agent's libel or slander of one other than servant or agent or former servant or agent, 150 A. L. R. 1338.

Venue of civil libel action against newspaper or periodical, 15 A. L. R. 3d 1249.

45-2-3. "Privileged publication" defined.—A privileged publication which shall not be considered as libelous per se, is one made:

- (1) In the proper discharge of an official duty.
- (2) In any publication of or any statement made in any legislative or judicial proceeding, or in any other official proceeding authorized by law.
- (3) In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.
- (4) By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof, or of a charge or complaint made by any person to a public official, upon which a warrant shall have been issued or an arrest made.
- (5) By a fair and true report, without malice, of the proceedings of a public meeting, if such meeting was lawfully convened for a lawful purpose and open to the public, or the publication of the matter complained of was for the public benefit.

History: L. 1933, ch. 46, § 3; C. 1943, 62-2-3.

Cross-References.

Communication between interested persons, 76-40-8.

Fair report of governmental proceedings, 76-40-6.

Malice, when presumed, 76-40-3.

1. Privilege—Charge of disloyalty to United States.

Statements in book "Under Cover," published in 1943 exposing pro-Nazi and pro-Fascist elements in United States, gist of which charged plaintiff with being disloyal to United States during national crisis, were not privileged, where plaintiff was not public official, candidate for public office or connected with public enterprise, and book attacked him as private citizen and not as public official, and did

not comment upon or criticize plaintiff's literary productions or public addresses. *Derounian v. Stokes*, 168 F. 2d 305.

2. —applicability of doctrine.

Only where defendant has published, concerning plaintiff, defamatory matter which is untrue, need recourse be had to doctrine applicable to communications which are privileged. *Williams v. Stand-and-Examiner Pub. Co.*, 83 U. 31, 27 P. 2d 1, distinguished in *Derounian v. Stokes*, 168 F. 2d 305.

3. —absolute and qualified privilege.

The Utah courts hold that publications dealing with political matters, public officials or candidates for office are entitled to a measurable privilege because of the public interest involved. As to this class of publications, the law raises a prima facie presumption in favor of the priv-

ilege. *Utah State Farm Bureau Federation v. National Farmers' Union Service Corp.*, 198 F. 2d 20, 33 A. L. R. 2d 1186.

For publication to be qualifiedly privileged there must be present both an occasion of privilege and use of that occasion in good faith; publication is actionable if actuated by express malice. *Atlas Sewing Centers, Inc. v. National Association, Etc.*, 260 F. 2d 803, 808.

In case of absolutely privileged communications, utterance or publication, although both false and malicious, does not give rise to cause of action. *Williams v. Standard-Examiner Pub. Co.*, 83 U. 31, 27 P. 2d 1.

In case of qualifiedly or conditionally privileged communication, law raises merely a prima facie presumption in favor of occasion. *Williams v. Standard-Examiner Pub. Co.*, 83 U. 31, 27 P. 2d 1.

Where communicating party has interest in subject matter or has duty, not legal but one of social or moral character, communications, if they are bona fide, are qualifiedly privileged. *Williams v. Standard-Examiner Pub. Co.*, 83 U. 31, 27 P. 2d 1.

4. — defamation of public officers.

One who makes malicious charges of a defamatory character of a public officer without probable cause for believing such charges to be true is not shielded against liability, but public officer who fails to perform his duty to public is not shielded from criticism honestly made. *Williams v. Standard-Examiner Pub. Co.*, 83 U. 31, 27 P. 2d 1.

Newspaper article with reference to pollution of city water supply causing epidemic of typhoid fever and placing blame on water commissioner for allowing polluted water to flow into water supply was qualifiedly or conditionally privileged. *Williams v. Standard-Examiner Pub. Co.*, 83 U. 31, 27 P. 2d 1.

5. — probable cause.

Presence of probable cause does not defeat an action founded upon a qualifiedly privileged communication if the defamatory matter was uttered or published with actual malice. *Williams v. Standard-Examiner Pub. Co.*, 83 U. 31, 27 P. 2d 1.

6. Truth as defense.

Truth of matters charged as defamatory exempts publisher thereof from civil liability. *Williams v. Standard-Examiner Pub. Co.*, 83 U. 31, 27 P. 2d 1, followed in *Derounian v. Stokes*, 168 F. 2d 305.

7. Questions for court and jury.

The question whether the comment on

or criticism of matters of public concern is fair and privileged, or malicious and libelous, is usually a question to be determined by the jury under all the circumstances, subject of course to the control of the court. *Utah State Farm Bureau Federation v. National Farmers' Union Service Corp.*, 198 F. 2d 20, 33 A. L. R. 2d 1186.

The law draws a clear distinction between criticism or comment, which may or may not be privileged, depending upon the circumstances in which it was uttered, and publication of an unequivocal and unambiguous fact, the legal import and effect of which is a question of law for the courts to decide, leaving only its truth or falsity for the determination of the jury. *Utah State Farm Bureau Federation v. National Farmers' Union Service Corp.*, 198 F. 2d 20, 33 A. L. R. 2d 1186.

8. Privilege—Slanderous statement by city council member during meeting.

Where, during a regularly scheduled public meeting of a city council, a council member made the statement that the plaintiff, a deputy city marshal, had "propositioned" a woman to whom he was issuing a traffic ticket, the statement was an absolutely privileged communication since it was made by defendant in his official capacity and it had a reasonable relationship to the subject of the meeting. *Carter v. Jackson*, 10 U. (2d) 284, 351 P. 2d 957.

9. Court opinions as privileged.

Trial court was correct as matter of law in dismissing complaint in which plaintiff alleged he had been slandered in an official opinion of Supreme Court since statement was made in course of judicial proceeding and in discharge of official duty and was thus not libelous per se. *Dodge v. Henriod*, 21 U. (2d) 277, 444 P. 2d 753.

10. Judicial immunity.

Where corporation's agent had not by his acts forced insurer to defend an action, insurer's inaccurate allegation in its pleading was within judicial immunity in subsequent action by agent against insurer for defamation and injury to his credit for insurer's allegation in previous suit that agent had violated statute by failing to deliver title certificate when allegation objected to was intended to mean the corporation. *Reliance Ins. Co. v. Hollins*, 16 U. (2d) 44, 395 P. 2d 537.

Collateral References.

Libel and Slander—34.

53 C.J.S. Libel and Slander § 87.

Administrative proceedings, privilege applicable to the judicial proceedings as extending to, 45 A. L. R. 2d 1296.

Agents, communication to agent or representative of person defamed as publication or as privileged, 172 A. L. R. 208.

Argument, statements in counsel's argument to jury as privileged, 61 A. L. R. 2d 1300.

Attorney, privilege in connection with proceedings to disbar or discipline attorney, 77 A. L. R. 2d 493.

Church matters, privilege as to communications respecting, 63 A. L. R. 649.

Comment upon judicial, legislative, or administrative proceeding, or the decision therein, statement in nature of, as within privilege accorded to proceeding or report thereof, 155 A. L. R. 1346.

Communication to defendant's employee or business associate as publication or as privileged, 166 A. L. R. 114.

Court and jury, relative provinces of court and jury as to privileged occasion and privileged communication in law of libel and slander, 26 A. L. R. 830.

Executive officer, scope of absolute privilege of, 132 A. L. R. 1340.

Findings, report, or like of judge or person acting in judicial capacity as privileged, 42 A. L. R. 2d 825.

Grand jury, proceedings, presentments, investigations, and reports of grand jury as privileged, 48 A. L. R. 2d 716.

Hiring and discharge, public officer's privilege as to statements made in connection with, 26 A. L. R. 3d 492.

Jurisdiction, lack of, as destroying privilege of defamatory allegations or statements in judicial proceedings, 158 A. L. R. 592.

Libel and slander:

— absolute privilege in respect of pleadings or other judicial matters as available to one who is neither a party, an attorney for a party, nor a witness, but who causes the inclusion of the defamatory matter, 144 A. L. R. 633.

— doctrine of privilege or of fair comment and criticism as applicable to statement or publication imputing impropriety or dishonesty in bringing or defending civil action or proceeding, 148 A. L. R. 1173.

— garbled, inaccurate, or mistaken report of judicial proceedings as within privilege, 120 A. L. R. 1236.

— plea of qualified privilege, 51 A. L. R. 2d 552.

— privilege as regards publication of judicial opinion, 146 A. L. R. 913.

— privilege regarding communications to police or other officer respecting commission of crime, 140 A. L. R. 1466.

— report of mercantile agency as privileged, 30 A. L. R. 2d 776.

— rolled-up plea of privilege and fair comment, 51 A. L. R. 2d 556, 575.

— statements in briefs as privileged, 32 A. L. R. 2d 423.

Malice, may actual malice which will defeat conditional privilege coexist with belief in truth of imputation, 18 A. L. R. 1160.

Municipal council, statements or utterances by member of municipal council or governing body of other political subdivision, in course of official proceedings, as privileged, 40 A. L. R. 2d 941.

News agency or regular correspondent, libelous or privileged character of publication by newspaper based on matter received from, 86 A. L. R. 475.

Physical condition, privilege of statements by physician, surgeon, or nurse concerning patient, 73 A. L. R. 2d 325.

Pleadings, relevancy of matter contained in pleading as affecting privilege within law of libel, 16 A. L. R. 746, 42 A. L. R. 878, 134 A. L. R. 483.

Police investigation as within rule of privilege relative to reported judicial proceedings, 132 A. L. R. 495.

Pretrial deposition and discovery procedures, application of privileges in the statements made in course of judicial proceedings to, 23 A. L. R. 3d 1172.

Privilege as to reports of judicial proceedings as attaching to publication of pleadings, etc., before hearing, 104 A. L. R. 1124.

Privilege in respect of communication to employer regarding indebtedness of employee, 151 A. L. R. 1104.

Public officer, doctrine of privileged or fair comment as applicable to misstatements of fact in publication (or oral communication) relating to public officer or candidate for office, 10 A. L. R. 412, 150 A. L. R. 358.

Qualified privilege of reply to defamatory publication, 103 A. L. R. 476.

Relative, defamation of one relative to another by person not related to either, as subject of qualified privilege, 25 A. L. R. 2d 1388.

Telegraph or telephone company's transmission of libelous or slanderous message as privilege, 63 A. L. R. 1118.

45-2-4. Malice not inferred from publication.—In the cases provided for in subdivisions (3), (4) and (5) of the preceding section [45-2-3], malice is not inferred from the communication or publication.

History: L. 1933, ch. 46, § 4; C. 1943, 62-2-4.

Effective Date.

Section 5 of Laws 1933, ch. 46 provided that the act should take effect when R. S. 1933 became effective.

1. Probable cause.

Presence of probable cause does not defeat an action founded upon a qualifiedly privileged communication if the defamatory matter was uttered or published with actual malice. *Williams v. Standard-Examiner Pub. Co.*, 83 U. 31, 27 P. 2d 1.

2. Evidence of malice.

Evidence in action for publication of articles attacking water commissioner for permitting polluted waters to flow into city water supply and placing blame upon him for typhoid epidemic held insufficient to go to jury on question of malice. *Wil-*

iams v. Standard-Examiner Pub. Co., 83 U. 31, 27 P. 2d 1.

Where publication was qualifiedly privileged, burden of proving actual malice was upon plaintiff. *Williams v. Standard-Examiner Pub. Co.*, 83 U. 31, 27 P. 2d 1.

Collateral References.

Libel and Slander ¶101(1).

53 C.J.S. *Libel and Slander* § 262.

Malice, may actual malice which will defeat conditional privilege coexist with belief in truth of imputation, 18 A. L. R. 1160.

What constitutes actual malice, within federal constitutional rule requiring public officials and public figures to show actual malice, 20 A. L. R. 3d 988.

Who is public official or otherwise within the federal constitutional rule requiring public officials to show actual malice, 19 A. L. R. 3d 1361.

45-2-5. Radio or television broadcasting station or network of stations.

—No person, firm, or corporation owning or operating a radio or television broadcasting station or network of stations shall be liable under the laws of libel, slander or defamation on account of having made its broadcasting facilities or network available to any person, whether a candidate for public office or any other person, or on account of having originated or broadcast a program for discussion of controversial or any other subjects, in the absence of proof of actual malice on the part of such owner or operator. In no event, however, shall any such owner or operator be held liable for any damages for any defamatory statement uttered over the facilities of such station or network by or on behalf of any candidate for public office.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-11-9; L. 1953, ch. 73, § 1.

Compiler's Notes.

The 1953 amendment inserted "or television," "or network of stations," "slander," and "or on account of having originated or broadcast a program" in the first sentence, and added the second sentence.

Collateral References.

Libel and Slander ¶74; *Telecommunications* ¶435.

53 C.J.S. *Libel and Slander* § 148; 86

C.J.S. *Telegraphs, Telephones, Radio and Television* §§ 156, 296.

Radio, 44 Am. Jur. 185 et seq., *Radio* § 185 et seq.

False news reports as to births, betrothals, marriages, divorces, or similar marital matters, 9 A. L. R. 3d 559.

Liability of radio broadcasting company for defamatory statement by one not in its employ during broadcast, 5 A. L. R. 2d 957.

Television transmission, 15 A. L. R. 2d 794.

45-2-6. Right of station to require submission of matter intended to be broadcast.—Any person, firm, or corporation owning or operating a radio or television broadcasting station shall have the right, but shall not be compelled, to require the submission and permanent filing, in such station, of a copy of the complete address, script, or other form of expression, intended to be broadcast over such station before the time of the intended broadcast thereof.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-11-10; L. 1953, ch. 73, § 1.

Compiler's Notes.

The 1953 amendment inserted "or television" and "script."

Collateral References.

Libel and Slander ⇨ 74; Telecommunications ⇨ 430.

53 C.J.S. Libel and Slander § 148; 86 C.J.S. Telegraphs, Telephones, Radio and Television § 294.

45-2-7. Limitations and restrictions upon immunity from liability—Failure to exercise due care.—Nothing in this act contained shall be construed to relieve any person broadcasting over a radio or television station from liability under the law of libel, slander, or defamation. Nor shall anything in this act be construed to relieve any person, firm, or corporation owning or operating a radio or television broadcasting station or network from liability under the law of libel, slander, or defamation on account of any broadcast prepared or made by any such person, firm, or corporation or by any officer or employee thereof in the course of his employment. In no event, however, shall any such person, firm, or corporation be liable for any damages for any defamatory statement or act published or uttered in or as a part of a visual or sound broadcast unless it shall be alleged and proved by the complaining party that such person, firm, or corporation has failed to exercise due care to prevent the publication or utterance of such statement or act in such broadcast. Bona fide compliance with any federal law or the regulation of any federal regulatory agency shall be deemed to constitute such due care as hereinabove mentioned.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-11-11; L. 1953, ch. 73, § 1.

Compiler's Notes.

The 1953 amendment inserted "television," "network" and "slander" each time they appear in the first and second sentences and added the third and fourth sentences.

Collateral References.

Libel and Slander ⇨ 74; Telecommunications ⇨ 430.

53 C.J.S. Libel and Slander § 148; 86 C.J.S. Telegraphs, Telephones, Radio and Television § 296.

45-2-8. Liability in case of joint operation.—In any case where liability shall exist on account of any broadcast where two or more broadcasting or television stations were connected together simultaneously or by transcription, film, metal tape, or other approved or adapted use for joint operation, in the making of such broadcast, such liability shall be confined and limited solely to the person, firm, or corporation owning or operating the radio or television station which originated such broadcast.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-11-12; L. 1953, ch. 73, § 1.

Compiler's Notes.

The 1953 amendment inserted "or television" in two places.

Repealing Clause.

Section 2 of Laws 1953, ch. 73 provided: "Section 45-2-9, Utah Code Annotated 1953, is repealed."

Collateral References.

Libel and Slander ⇨ 74; Telecommunications ⇨ 430.

53 C.J.S. Libel and Slander § 148.

45-2-9. Repealed.

Repeal.

Section 45-2-9 (L. 1951, ch. 58, § 1; C. 1943, Supp., 104-11-13), relating to manner

and time of retraction of alleged libel, slander or defamation, was repealed by Laws 1953, ch. 73, § 2.

45-2-10. Privileged broadcasts.—A privileged broadcast which shall not be considered as libelous, slanderous, or defamatory per se, is one made:

1. In the proper discharge of an official duty.
2. In any broadcast of or any statement made in any legislative or judicial proceeding, or in any other official proceeding authorized by law.
3. By a fair and true report, without malice of a judicial, legislative or other public official proceeding, or of anything said in the course thereof, or of a charge or complaint made by any person to a public official, upon which a warrant shall have been issued or an arrest made.
4. By a fair and true report, without malice, of the proceedings of a public meeting, if such meeting was lawfully convened, for a lawful purpose and open to the public or the broadcast of the matter complained of was for the public benefit.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-11-14.

TITLE 46

NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS

- Chapter 1. Notaries Public, 46-1-1 to 46-1-10.
2. Commissioners of Deeds, 46-2-1 to 46-2-9.

CHAPTER 1

NOTARIES PUBLIC

- Section 46-1-1. Qualifications—Appointment—Term—Removal.
46-1-2. Master list of notaries public—Commissions certified to clerks of district courts—Names of governor and secretary of state printed on certificates.
46-1-3. Oath and bond.
46-1-4. Action on bond—Parties—Limitation of action.
46-1-5. Powers.
46-1-6. Record of protests—Evidence.
46-1-7. Seal.
46-1-8. Affix to signature place of residence and date commission expires.
46-1-9. Acting after commission expires—Penalty.
46-1-10. Disqualification because of interest.

46-1-1. Qualifications—Appointment—Term—Removal.—Notaries public shall have the qualifications of electors, and shall be appointed for the state at large. The governor may appoint and commission as many notaries public as he may deem necessary. They shall hold office for the term of four years from and after the date of their commissions, but the governor may remove from office any notary public during the term for which he was appointed. The commissions shall be filed with, and be recorded in the office of, the secretary of state.

History: R. S. 1898 & C. L. 1907, §§ 1666, 1668; L. 1909, ch. 99, § 1; C. L. 1917, §§ 4250, 4252; L. 1921, ch. 84, § 1; R. S. 1933 & C. 1943, 63-1-1.

66 C.J.S. Notaries § 4.
Generally, 39 Am. Jur. 212 et seq., Notary Public § 1 et seq.

Cross-Reference.

Fees, Const. Art. XXI, § 2, 21-4-1.

Attorney's misconduct as notary as ground for disbarment or suspension, 43 A. L. R. 108, 55 A. L. R. 1373.

Collateral References.

Notaries ⇨ 2.

Notary as "officer," 79 A. L. R. 449.
Women, eligibility to act as notary, 79 A. L. R. 451.

46-1-2. Master list of notaries public—Commissions certified to clerks of district courts—Names of governor and secretary of state printed on certificates.—Hereafter, whenever a notarial commission is issued to any person, the governor and the secretary of state shall certify to a master list of notaries public. The issuance of all commissions shall be certified to each of the several clerks of the district courts giving the dates of issuance and expiration of same. All notary certificates shall have printed thereon the names of the governor and the secretary of state.

46-1-3 NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS

History: L. 1903, ch. 109, § 1; C. L. 1907, § 2416x4; C. L. 1917, § 5707; R. S. 1933 & C. 1943, 63-1-2; L. 1959, ch. 71, § 1.

Compiler's Notes.

Prior to the 1959 amendment this section read: "The secretary of state shall hereafter whenever he issues a notarial commission to any person certify such fact to each of the several clerks of the district courts, giving also the dates of issuance and expiration of the same."

46-1-3. Oath and bond.—Each notary public before entering upon his official duties shall take the constitutional oath, and give bond to the state of Utah in the penal sum of \$500, conditioned that he will faithfully perform the duties of his office. Such bonds shall be approved by the secretary of state and filed in his office.

History: R. S. 1898 & C. L. 1907, § 1667; C. L. 1917, § 4251; R. S. 1933 & C. 1943, 63-1-3.

Cross-Reference.

Clerk of district court to keep record, 17-20-3, Rules of Civil Procedure, Rule 79 (d) (15).

Collateral References.

Notaries—9.

66 C.J.S. Notaries § 9.

46-1-4. Action on bond—Parties—Limitation of action.—The bond of a notary public may be sued on by any person injured through official delinquencies against which it is intended to provide; provided, that such action shall be instituted within three years from the time such cause of action shall have accrued.

History: R. S. 1898 & C. L. 1907, § 1668; C. L. 1917, § 4252; R. S. 1933 & C. 1943, 63-1-4.

Collateral References.

Notaries—11.

66 C.J.S. Notaries § 12.

Collateral References.

Notaries—2.

66 C.J.S. Notaries § 3.

Liability of notary public or his bond, 18 A. L. R. 1302, 17 A. L. R. 2d 948.

Liability of notary to third person relying on his certificate or report, 68 A. L. R. 376.

Measure of damages for false or incomplete certificate by notary public, 13 A. L. R. 2d 1039.

46-1-5. Powers.—Notaries public may exercise the following powers within this state: Administer all oaths provided by law, acknowledge powers of attorney and all such instruments of writing conveying or affecting property in any part of this state, or elsewhere as may be lawful; take affidavits and depositions; make declarations and protests; and do all other acts usually done by notaries public.

History: R. S. 1898 & C. L. 1907, § 1669; C. L. 1917, § 4253; L. 1921, ch. 84, § 1; R. S. 1933 & C. 1943, 63-1-5.

66 C.J.S. Notaries § 6.

Cross-References.

Acknowledgment of conveyances, 57-2-1 et seq.

Claims against estates, presentment by notary, 75-9-6.

Oaths, power to administer, 78-24-16.

Telephone and telegraph, acknowledgments by, 69-1-2, 69-1-4.

Collateral References.

Notaries—4.

Disqualification of notary public, or other official empowered to administer oaths or take acknowledgments, where he is attorney for person taking oath or making acknowledgment, 74 A. L. R. 771.

Drafting or filling in blanks in instruments as to land, 53 A. L. R. 2d 792.

Invalid will, liability for drawing, 65 A. L. R. 2d 1363.

Power of notary to take affidavit as basis for warrant of arrest, 16 A. L. R. 924.

Proof of identity upon which officer certifying to acknowledgment is justified in acting, 10 A. L. R. 871.

Qualification of stockholder of a corpo-

ration or member of association to take acknowledgment of, or attest as notary an instrument to which corporation or association is a party, 51 A. L. R. 1529.

46-1-6. Record of protests—Evidence.—Each notary public shall keep a fair record of all notices of protest made by him, noting the time and manner in which they were served, the names of all parties to whom they were directed and a description and the amount of the instrument protested. Such record shall be competent evidence to prove such notices. When required and the fees therefor are paid each notary public shall give a certified copy of any official record of paper in his office.

History: R. S. 1898 & C. L. 1907, § 1670; C. L. 1917, § 4254; R. S. 1933 & C. 1943, 63-1-6.

Powers and authority, 39 Am. Jur. 218 et seq., Notary Public § 18 et seq.

Collateral References.

Notaries⇒9.

66 C.J.S. Notaries § 9.

Right of notary who protests paper to change or contradict his certificate, 28 A. L. R. 543.

46-1-7. Seal.—Each notary public shall have an official seal, with which he shall authenticate all of his official acts. It must contain the words "State of Utah," and "Notary Public" or "Notarial Seal," with the surname and at least the initials of his Christian name.

History: R. S. 1898 & C. L. 1907, § 1671; C. L. 1917, § 4255; L. 1921, ch. 84, § 1; R. S. 1933 & C. 1943, 63-1-7.

66 C.J.S. Notaries § 8.

Collateral References.

Notaries⇒8.

What amounts to notary's seal, 7 A. L. R. 1663.

46-1-8. Affix to signature place of residence and date commission expires.—To all acknowledgments, oaths, affirmations and instruments of every kind taken and certified by a notary public he shall affix to his signature his official title and his place of residence and the date on which his commission expires.

History: R. S. 1898, §§ 1671, 1672; L. 1907, ch. 40, § 1; C. L. 1907, §§ 1671, 1672; C. L. 1917, §§ 4255, 4256; L. 1921, ch. 84, § 1; R. S. 1933 & C. 1943, 63-1-8.

Collateral References.

Notaries⇒9.

66 C.J.S. Notaries § 8.

46-1-9. Acting after commission expires—Penalty.—Any person who willfully affixes his signature and seal as notary public to any instrument after the expiration of his commission as such notary public is guilty of a misdemeanor.

History: R. S. 1898 & C. L. 1907, § 1673; C. L. 1917, § 4257; R. S. 1933 & C. 1943, 63-1-9.

Collateral References.

Notaries⇒10.

66 C.J.S. Notaries § 11.

46-1-10. Disqualification because of interest.—Any notary public who is a stockholder, director, officer or employee of a bank or other corporation may take the acknowledgment of any party to any written instrument executed to or by such corporation, and may administer an oath to

46-2-1 NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS

any other stockholder, director, officer, employee or agent of such corporation, and may protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned, or held for collection, by such corporation; but it shall be unlawful for any notary public to take the acknowledgment of any person to an instrument executed by or to a bank or other corporation of which he is a stockholder, director, officer or employee where he is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation where he is individually a party to such instrument.

History: L. 1927, ch. 23, § 1; R. S. 1933 & C. 1943, 63-1-10.

Fees generally, 21-4-1, 21-4-2.

Collateral References.

Cross-References.

Notaries 4.

Exemption from execution, 78-23-1.

66 C.J.S. Notaries § 6.

CHAPTER 2

COMMISSIONERS OF DEEDS

- Section 46-2-1. Appointment—Term—Removal.
46-2-2. Powers.
46-2-3. Affix to signature place of residence and date commission expires.
46-2-4. Force and effect of official acts.
46-2-5. Official oath.
46-2-6. Official oaths and impressions of seals to be filed with secretary of state.
46-2-7. Fees.
46-2-8. Copy of laws to accompany commission.
46-2-9. Commissioners of other states and countries residing here.

46-2-1. Appointment—Term—Removal.—The governor may appoint and commission in each state and territory of the United States, except this state, and in any foreign country, one or more commissioners of deeds, to hold office for the term of four years from and after the date of their commissions, but the governor may remove from office any commissioner during the term for which he was appointed. The commission shall be filed with, and be recorded in the office of, the secretary of state.

History: R. S. 1898 & C. L. 1907, § 1674; C. L. 1917, § 4258; R. S. 1933 & C. 1943, 63-2-1.

Collateral References.

Acknowledgment 19.

1 C.J.S. Acknowledgments § 42.

Generally, 39 Am. Jur. 212 et seq., Notary Public § 1 et seq.

46-2-2. Powers.—Every commissioner of deeds has power within the state or country for which he was appointed:

- (1) To administer and certify oaths.
- (2) To take and certify depositions and affidavits.
- (3) To take and certify the acknowledgment or proof of powers of attorney, mortgages, transfers, grants, deeds or other instruments for record.

(4) To provide and keep an official seal, upon which must be engraved his name, the words "Commissioner of Deeds for the State of Utah," and the name of the state or country for which he is commissioned.

(5) To authenticate with his official seal all of his official acts.

History: R. S. 1898 & C. L. 1907, § 1675;
C. L. 1917, § 4259; R. S. 1933 & C. 1943,
63-2-2.

1 C.J.S. Acknowledgments § 42.

Proof of identity upon which officer certifying to acknowledgment is justified in acting, 10 A. L. R. 871.

Collateral References.

Acknowledgment¹⁹.

46-2-3. Affix to signature place of residence and date commission expires.—To all acknowledgments, oaths, affirmations and instruments of every kind taken and certified by a commissioner of deeds he shall affix to his signature his official title and his place of residence and the date on which his commission expires.

History: R. S. 1898 & C. L. 1907, § 1675;
C. L. 1917, § 4259[3]; R. S. 1933 & C.
1943, 63-2-3.

Collateral References.

Acknowledgment²⁴.

1 C.J.S. Acknowledgments § 73.

46-2-4. Force and effect of official acts.—All oaths administered, depositions and affidavits taken, and all acknowledgments and proofs certified, by commissioners of deeds have the same force and effect, to all intents and purposes, as if done and certified in this state by any officer authorized by law to perform such acts.

History: R. S. 1898 & C. L. 1907, § 1676;
C. L. 1917, § 4260; R. S. 1933 & C. 1943,
63-2-4.

Collateral References.

Acknowledgment¹⁹.

1 C.J.S. Acknowledgments § 42.

46-2-5. Official oath.—Before a commissioner of deeds can perform any of the duties of his office, he shall take and subscribe an oath that he will faithfully perform his duties, which oath shall be taken and subscribed before some judge or clerk of a court of record in the state, territory or foreign country in which the commissioner is to exercise his functions, and shall be certified under the hand of the person taking it and the seal of his court.

History: R. S. 1898 & C. L. 1907, § 1677;
C. L. 1917, § 4261; R. S. 1933 & C. 1943,
63-2-5.

46-2-6. Official oaths and impressions of seals to be filed with secretary of state.—The official oaths of commissioners of deeds and impressions of their official seals must be filed in the office of the secretary of state within six months after they are taken and adopted.

History: R. S. 1898 & C. L. 1907, § 1678;
C. L. 1917, § 4262; R. S. 1933 & C. 1943,
63-2-6.

46-2-7. Fees.—The fees of commissioners of deeds are the same as those prescribed for notaries public.

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History: R. S. 1898 & C. L. 1907, § 1679;
C. L. 1917, § 4263; R. S. 1933 & C. 1943,
63-2-7.

Cross-References.

Fees of commissioners to be same as
those of notaries, 21-4-2.

Fees of notary public, 21-4-1.

46-2-8. Copy of laws to accompany commission.—The secretary of state must transmit with the commission to the appointee a certified copy of this chapter, and of the laws prescribing the fees of notaries public.

History: R. S. 1898 & C. L. 1907, § 1680;
C. L. 1917, § 4264; R. S. 1933 & C. 1943,
63-2-8.

46-2-9. Commissioners of other states and countries residing here.—Commissioners of deeds for other states or countries residing in this state shall file with the secretary of state a certified copy of their commissions, together with a statement of their places of residence.

History: R. S. 1898 & C. L. 1907, § 1681;
C. L. 1917, § 4265; R. S. 1933 & C. 1943,
63-2-9.